

HOUSE BILL No. 1361

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-23-9.

Synopsis: Performance bonds for state highway contracts. Provides that, after June 30, 2015, the department of transportation (department) shall require the lowest and best bidder for a state highway contract to submit a performance bond payable to the state not more than 10 days after the contract is let. (Current law requires each bidder for a contract for a project with an estimated cost of more than \$200,000 to submit a bid guarantee and a performance bond.) Provides that, if a bidder fails to submit the performance bond within 10 days, the department shall let the contract to the next lowest and best bidder. Provides that a bid guarantee or performance bond must be on forms: (1) specified by the department; or (2) provided by surety companies and approved by the department.

Effective: July 1, 2015.

Sullivan, Soliday

January 14, 2015, read first time and referred to Committee on Roads and Transportation.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1361

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-23-9-8, AS AMENDED BY P.L.133-2007,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 8. **(a) This section applies only to proposals**
4 **submitted before July 1, 2015.**
5 **(b)** The department:
6 (1) shall require each bidder to submit a bid guarantee and a
7 performance bond payable to the state with the bidder's proposal
8 if the estimated cost of the project is more than two hundred
9 thousand dollars (\$200,000); and
10 (2) may require a bidder to submit a bid guarantee and a
11 performance bond payable to the state with the bidder's proposal
12 if the estimated cost of the project is not more than two hundred
13 thousand dollars (\$200,000).
14 Instead of the bond, the department may establish by rule the
15 requirements that, in its discretion, are necessary to assure payment of



subcontractors, suppliers, and employees by the contractor.

SECTION 2. IC 8-23-9-8.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 8.1. (a) This section applies to proposals submitted after June 30, 2015.**

(b) The department:

(1) shall require each bidder to submit a bid guarantee payable to the state with the bidder's proposal if the estimated cost of the project is more than two hundred thousand dollars (\$200,000); and

(2) may require a bidder to submit a bid guarantee payable to the state with the bidder's proposal if the estimated cost of the project is not more than two hundred thousand dollars (\$200,000).

(c) The department shall require the lowest and best bidder for a contract under this chapter to submit a performance bond payable to the state. If the lowest and best bidder fails to submit the performance bond within ten (10) days after the contract is let, the department shall award the contract to the next lowest and best bidder.

(d) In addition to requiring a bid guarantee under subsection (b) and a performance bond under subsection (c), the department may adopt rules under IC 4-22-2 to assure payment of subcontractors, suppliers, and employees by a contractor.

SECTION 3. IC 8-23-9-12, AS AMENDED BY P.L.2-2005, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 12. The A bid guarantee or performance bond provided in this section required under this chapter must be in substantially the following form:**

"KNOW ALL PERSONS BY THESE PRESENTS, THAT _____ as principal and _____ as surety, are firmly bound unto the state of Indiana in the penal sum of an amount equal to _____ percent of the principal's bid or the contract price; if the proposal is accepted for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, and our joint and several heirs, executors, administrators, and assigns, firmly by these presents, this _____ day of _____, ____.

"THE CONDITIONS OF THE ABOVE OBLIGATIONS ARE SUCH That, Whereas, the principal is herewith submitting a bid and proposal for the erection, construction, and completion of _____ in accordance with the plans and specifications approved and adopted by the department, which are



1 made a part of this bond:

2 "NOW, ~~THEREFORE~~, if the department shall award the principal
3 the contract for work and the principal shall promptly enter into a
4 contract with the department in the name of the state of Indiana for the
5 work and shall well and faithfully do and perform the same in all
6 respects according to the plans and specifications adopted by the
7 department, and according to the time, terms, and conditions specified
8 in the contract to be entered into; and in accordance with all
9 requirements of law; and shall promptly pay all debts incurred by the
10 principal or any subcontractor in the construction of the work;
11 including labor, service, and materials furnished; then this obligation
12 shall be void; otherwise to remain in full force, virtue, and effect.

13 "IF IS AGREED that no modifications, omissions, or additions in
14 or to the terms of such contract or in or to the plans or specifications
15 therefor shall in any wise affect the obligation of such sureties on its
16 bond:

17 "IN WITNESS WHEREOF, we hereunto set our hands and seals
18 this ____ day of _____, 20__." provided on forms:

19 (1) specified by the department; or

20 (2) given by surety companies and approved by the
21 department.

